

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF HEALTH AND HUMAN
SERVICES, et al.,

Defendants.

19 Civ. 4676 (PAE) (lead)

19 Civ. 5433 (PAE) (consolidated)

19 Civ. 5435 (PAE) (consolidated)

**PLAINTIFFS' NOTICE OF MOTION
(Fed. R. Civ. P. 56, Fed. R. Civ. P. 65, and 5 U.S.C. § 705)**

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 56, and this Court's July 16, 2019 Order, Dkt. 121, Plaintiffs hereby move the Court for summary judgment with respect to all six claims for relief in Plaintiffs' complaint in this action challenging the Final Rule entitled *Protecting Statutory Conscience Rights in Health Care: Delegations of Authority*, 84 Fed. Reg. 23,170 (May 21, 2019). *See* Compl. ¶¶ 159-201, Dkt. 3.

Plaintiffs request that the Court declare that the Final Rule is in excess of the Department's statutory jurisdiction, authority, or limitations, or short of statutory right within the meaning of 5 U.S.C. § 706(2)(C); declare that the Final Rule is arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law within the meaning of 5 U.S.C. § 706(2)(A); declare that the Final Rule is unconstitutional in violation of the constitutional separation of powers, and the Spending and Establishment Clauses of the United States Constitution; vacate and set aside the Final Rule; and grant other such relief as this Court may deem proper.

Alternatively, pursuant to Federal Rule of Civil Procedure 65 and this Court's July 16

Order, Plaintiffs hereby move the Court for a preliminary injunction to enjoin Defendants from implementing, applying, or taking any action under the Final Rule in order to preserve the status quo until this case is decided on the merits and final judgment is entered.

Alternatively, pursuant to 5 U.S.C. § 705 and this Court's July 16 Order, Plaintiffs move for a stay postponing the effective date of the Final Rule until this case is decided on the merits and final judgment is entered.

In support of this motion, Plaintiffs rely on the accompanying Memorandum of Law; the Declaration of Matthew Colangelo dated September 5, 2019; the exhibits attached to that Declaration; the pleadings and papers on file in this action; and any argument and evidence that is presented on the hearing of this motion. In addition, pursuant to this Court's July 16 Order, Plaintiffs rely on:

- The Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Injunction, Dkt. 45 (filed June 14, 2019);
- The Declaration of Matthew Colangelo and the exhibits attached to that Declaration, Dkt. 43 (filed June 14, 2019);
- The exhibit to Plaintiffs' Notice of Filing of Corrected Exhibit, Dkt. 44 (filed June 14, 2019);
- The Joint Memorandum of Law in Support of [Provider] Plaintiffs' Motion for Preliminary Injunction, 19 Civ. 5433 (PAE), Dkt. 20 (filed June 17, 2019);
- The Memorandum of Law in Support of [Provider] Plaintiffs' Cross-Motion for Summary Judgment, in Opposition to Defendants' Motion for Summary Judgment, and Reply in Support of Plaintiffs' Motion for Preliminary Injunction, Dkt. ____ (filed Sept. 5, 2019).

DATED: September 5, 2019

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